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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 13 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of the Pay Telephone )

Reclassification and Compensation )

Provisions of the Telecommunications )

Act of 1996 )

CC Docket No. 96-128

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REPLY COMMENTS OF MIDCOM COMMUNICATIONS INC. ON  
PETITION OF TELCO COMMUNICATIONS GROUP, INC.

I. INTRODUCTION

MIDCOM Communications Inc. ("MIDCOM") hereby submits its Reply Comments on the Petition of Telco Communications Group, Inc. for Waiver of Section 64.1301 of the Commission's Rules ("Petition"). Specifically, MIDCOM responds to arguments raised in the comments filed by AT&T Corp. ("AT&T"), Ameritech and the American Public Communications Council ("APCC") and asserts that Telco should be granted a waiver from the interim flat-rate compensation mechanism required under the Commission's *Payphone Order*<sup>1/</sup> and be allowed to pay compensation on a per-call basis during the interim period of November 6, 1996, through November 5, 1997.

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<sup>1/</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20 1996) ("*Payphone Order*"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996 ("*Order on Reconsideration*"); appeal docketed *sub nom.* Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996) (collectively, "*Payphone Reclassification Orders*").

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## II. DISCUSSION

### A. Comments of AT&T

AT&T argues that the granting of Telco's Petition would have the effect of increasing the payment obligations of other interexchange carriers ("IXCs").<sup>2/</sup> However, AT&T provides no explanation in support of this claim. In fact, the granting of Telco's Petition will have no effect on other IXCs' obligations, but instead will merely decrease the amount of compensation that Telco will pay to PSPs during the interim period. This decrease in Telco's compensation amount will not proportionately increase the flat-rate compensation amounts of the other responsible IXCs since the Commission has already fixed those amounts.<sup>3/</sup> Contrary to AT&T's argument, the Commission has expressly stated in orders granting similar waivers in the past that the obligations of the other IXCs required to pay flat-rate compensation will not be affected by the granting of a waiver to pay compensation on a per-call basis.<sup>4/</sup>

### B. Comments of Ameritech

Ameritech states that Telco's Petition should be denied because Telco has not mutually agreed with Ameritech to pay per-call compensation as required pursuant to Paragraph 129 of

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<sup>2/</sup> AT&T Comments at 3-4.

<sup>3/</sup> See *Payphone Order*, Appendix F.

<sup>4/</sup> See In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Memorandum Opinion and Order, DA 97-482, para. 12 (re. March 7, 1997) ("*Oncor Waiver*"); Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Memorandum Opinion and Order, 10 FCC Rcd 5490, para. 6, (Com. Car. Bur. 1995) ("*Sprint Waiver*"); Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation, Memorandum Opinion and Order, 10 FCC Rcd 1590, para. 9, (Com. Car. Bur. 1994) ("*AT&T Waiver*").

the *Order on Reconsideration*.<sup>5/</sup> Telco does reference this paragraph in support of its waiver request.<sup>6/</sup> However, under the circumstances described in Telco's Petition, no PSP would reasonably be expected to agree with Telco's per-call compensation approach since it would result in a decrease in the PSP's overall compensation amount during the interim phase.

Therefore, Telco's request for a waiver is better viewed as being similar to the waivers previously granted by the Commission to Oncor, Sprint and AT&T. Because the compensation mechanism existing during the interim period under the *Payphone Reclassification Orders* is identical to the mechanism that existed under the *Second Order and Report*<sup>7/</sup> (with the exception of an increase in the flat-rate compensation level), IXCs should be able to obtain the same waivers that were granted under the *Second Order and Report* as long as they can prove that they have the ability to track payphone calls.

Ameritech also argues that the granting of Telco's Petition would unfairly reduce the total compensation of PSPs.<sup>8/</sup> However, this argument is misplaced. In the *Payphone Order*, the Commission specifically held that the most appropriate way to ensure fair compensation to PSPs as required under Section 276 of the Telecommunications Act of 1996 (the "Act"), was to let the market set the price for individual payphone calls, such that IXCs should be required to pay

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<sup>5/</sup> Ameritech Comments at 2 (citing *Order on Reconsideration* at para. 129).

<sup>6/</sup> Telco Petition at 3.

<sup>7/</sup> Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Second Report and Order, 7 FCC Rcd 3251 (1992) ("*Second Report and Order*").

<sup>8/</sup> *Id.* at 3.

compensation on a per-call basis.<sup>9/</sup> However, because the Commission recognized that not all IXC's at the time had the capabilities to track calls from payphones, it determined that it was appropriate to adopt an interim flat-rate compensation period to give the IXC's time to implement the necessary tracking capabilities.<sup>10/</sup> For reasons of administrative convenience, the Commission concluded it would model the interim mechanism on that set forth in access code compensation proceeding, CC Docket No. 91-35.<sup>11/</sup> In essence, the flat-rate compensation mechanism during the interim period is an exception to the preferred per-call compensation mechanism that was adopted by the Commission purely as a temporary expedient.

Because the Commission, the *Payphone Order* (and previously in the *Oncor*, *Sprint* and *AT&T Waivers*), has expressed its strong preference for compensating PSPs on a per-call basis, Telco and all other similarly situated IXC's should not be forced to pay compensation on a flat-rate basis during the interim period if they can show that they have the capability to track payphone calls. Allowing such IXC's to pay per-call compensation during the interim phase is particularly appropriate if they can show that paying flat-rate compensation would overcompensate PSPs, which is clearly contrary to the Act's expressed intent of requiring *fair* compensation to PSPs.

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<sup>9/</sup> *Payphone Order* at para. 49.

<sup>10/</sup> *Id.* at para. 96.

<sup>11/</sup> *Id.* at para. 119 (citing *Second Order and Report*).

### C. Comments of American Public Communications Council

In addition to making arguments similar to those of Ameritech, the American Public Communications Council (“APCC”) asserts that the Commission should deny Telco's Petition because Telco's request for a waiver does not meet the Commission's general waiver standards.<sup>12/</sup> APCC first argues that Telco has shown no special circumstances to warrant the granting of a waiver. APCC supports this argument by focusing on Telco's assertion that, under flat-rate compensation, Telco is required to pay higher compensation than it would under per-call compensation. APCC claims that, because these circumstances are not “special” or “unique” to Telco, Telco's waiver request is simply a “standardless waiver” that should not be granted.

However, APCC's focus is entirely misplaced. The special circumstances existing in this case that warrant a waiver do not relate to Telco's assertion that its compensation rate is too high, but instead focus on Telco's argument that it can track payphone calls and has the ability to pay compensation during the interim period on a per-call basis. These special circumstances are identical to those on which the Commission relied in granting similar waivers to Oncor, AT&T and Sprint.<sup>13/</sup>

APCC further argues that Telco's waiver request is invalid because it would not serve the public interest. APCC fails to provide any support for this argument other than its assertion that PSPs will be paid less if a waiver is granted. Contrary to APCC's claim, granting Telco's waiver request would clearly serve the public interest by furthering the intent of the Act to ensure that

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<sup>12/</sup> APCC Comments at 4-10.

<sup>13/</sup> See *Oncor Waiver* at para. 12; *AT&T Waiver* at para. 9; *Sprint Waiver* at para. 6.

PSPs receive *fair* compensation and by preventing Telco and its customers from being unfairly burdened by paying for an unused service. In addition, as recognized by the Commission in the *Oncor*, *Sprint* and *AT&T Waivers*, allowing an IXC to pay compensation on a per-call basis serves the public interest by encouraging PSPs to place their payphones in locations that are likely to generate the most calls.<sup>14/</sup>

APCC also claims that, if the Commission decides to grant a waiver to Telco, it should do so only on a prospective basis.<sup>15/</sup> In support of this assertion, APCC states that the waivers granted to Sprint and AT&T were prospective only and that the Oncor waiver was given prospective effect from the date of its request. It is true that the Sprint and AT&T waivers were granted on a prospective basis only. However, the reason for doing so was that both Sprint and AT&T had been required to pay compensation to PSPs since April 1992, the date of the Commission's *Second Order and Report*, and it was only upon the Commission's orders in the *Sprint* and *AT&T Waivers* that these parties were able to successfully establish their capability to pay compensation on a per-call basis. In contrast, Telco has shown that it has had this same capability since the inception of the interim flat-rate compensation period in November 1996.

Finally, APCC is incorrect in its characterization of the Oncor waiver. The Commission granted Oncor a waiver to pay compensation on a per-call basis for the period of April 1, 1996, through November 5, 1996. However, Oncor's request for a waiver was filed on April 29, not April 1.<sup>16/</sup> In actuality, the Commission granted Oncor a waiver that was retroactive to the date

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<sup>14/</sup> See *Oncor Waiver* at para. 12; *AT&T Waiver* at para. 9; *Sprint Waiver* at para. 6.

<sup>15/</sup> APCC Comments at 10-14.

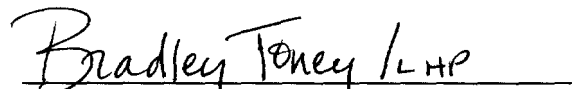
<sup>16/</sup> *Oncor Waiver* at para. 1.

that Oncor's compensation obligations became effective, which was April 1, 1996.<sup>17/</sup> Therefore, similar to the waiver granted to Oncor, Telco should be granted a waiver for the entire interim period, retroactive to November 6, 1996.

### III. CONCLUSION

Telco has established the prerequisites for obtaining a waiver of Section 64.1301 of the Commission's Rules by showing that: (1) it is able to track calls from payphones and to pay compensation on a per-call basis during the interim period and (2) a per-call compensation mechanism during the interim period is in the public interest. The Commission should therefore grant Telco's waiver as requested in its Petition. The Commission should also expand its decision beyond Telco's specific request to allow any IXC that makes a similar showing to obtain a waiver of Section 64.1301.

Respectfully submitted,

A handwritten signature in dark ink, reading "Bradley Toney / LHP", written over a horizontal line.

Steven P. Goldman  
Vice President & General Counsel  
Bradley D. Toney  
Assistant Counsel  
MIDCOM Communications Inc.  
1111 Third Avenue, Suite 1600  
Seattle, WA 98101  
Phone: (206) 628-7369  
Fax: (206) 628-8295

June 13, 1997

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<sup>17/</sup> See *Revised Compensation Obligations Notice*, DA 96-346 (rel. March 15, 1996).

## CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, do hereby certify that on this 13th day of June, 1997, I caused copies of the foregoing "Reply Comments of Midcom Communications Inc. On Petition of Telco Communications Group, Inc." to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

Dana Frix, Esq.  
Pamela S. Arluk, Esq.  
Swidler & Berlin  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007

\*Michael Carowitz  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 6008  
Washington, D.C. 20554

\*Regina Keeney, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

International Transcription Service  
1231 20th Street, N.W.  
Washington, D.C. 20036

\*John B. Muleta, Chief  
Enforcement Division  
Common Carrier Bureau  
Room 6008  
2025 M Street, N.W.  
Washington, D.C. 20554

Albert H. Kramer  
Robert F. Aldrich  
Christopher T. McGowan  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, D.C. 20037-1526

\*Via Hand Delivery

Alan N. Baker  
Ameritech  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196

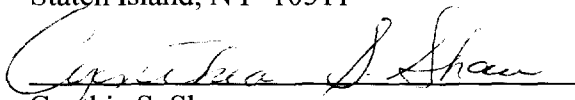
Mark C. Rosenblum  
Peter H. Jacoby  
Richard H. Rubin  
AT&T Corp.  
295 North Maple Avenue  
Room 3250J1  
Basking Ridge, NJ 07920

Anthony M. Copeland  
Business Telecom, inc.  
4300 Six Forks Road  
Raleigh, NC 27624

Michael K. Kellogg  
Jeffrey A. Lamken  
Kevin J. Cameron  
Kellogg, Huber, Hansen, Todd & Evans  
1301 K Street, N.W.  
Suite 1000 West  
Washington, D.C. 20005

John J. Smith  
Global Telecommunications Deployment  
Manager  
Xerox Corporation  
161 Chestnut Street-02A  
Rochester, NY 14604

J. Manning Lee  
Teleport Communications Group Inc.  
Two Teleport Drive, Suite 300  
Staten Island, NY 10311

  
Cynthia S. Shaw